

**OFFICE OF THE STANDING CHAPTER 13 TRUSTEE**  
6100 Western Place Dr., Ste. 1050  
Fort Worth, TX 76107  
(817) 916-4710 Phone  
(817) 916-4770 Fax

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

<b>IN RE:</b>	§	<b>CASE NO. 10-42342-RFN</b>
	§	
<b>JOE MICHAEL SIMMONS</b>	§	
<b>and</b>	§	<b>CHAPTER 13</b>
<b>RACHAEL ANN SIMMONS,</b>	§	
	§	<b>Pre-hearing Conference</b>
<b>DEBTORS</b>	§	<b>December 3, 2010 at 1:00 P.M.</b>

**TRUSTEE'S OBJECTION TO LATE FILED PROOF OF CLAIM**

**TO THE HONORABLE U. S. BANKRUPTCY JUDGE:**

Now comes Alice Whitten, the Standing Chapter 13 Trustee ("Trustee") and files her Trustee's Objection to the Late Filed Proof of Claim on behalf of GEMB pursuant to Rule 3007(a) of the Bankruptcy Rules of Civil Procedure, and the Trustee would respectfully show the Court as follows:

1. Debtors filed a Voluntary Petition under Chapter 13 of the Bankruptcy Code on or about April 5, 2010.
2. Debtors' Chapter 13 Plan was confirmed on or about June 30, 2010. Additionally, the Non-governmental Claims Bar Date ended on August 17, 2010.
3. On or about October 11, 2010, Debtors filed a Proof of Claim, claim number 19-1, on behalf of GEMB ("Creditor").
4. The Trustee asserts that claim 19-1 is late filed and should be disallowed.
5. The Trustee would show that a creditor must file a proof of claim to

receive distribution under the plan and that failure to file the claim timely bars any distributions under the plan.

6. Additionally, Rule 3004 of the Federal Rules of Bankruptcy Procedure provides:

If a creditor does not timely file a proof of claim under Rule 3002(c) or 3003(c), the debtor or trustee may file a proof of claim within 30 days after the expiration of the time for filing claims prescribed by Rule 3002(c) or 3003(c), whichever is applicable... (FRBP 3004).

7. Therefore, the Trustee asserts that the Proof of Claim filed by Debtor on behalf of GEMB, should be disallowed as it was not timely filed by the Creditor and the claim does not meet the requirements under Rule 3004. Therefore, the Creditor is not entitled to a distribution under Debtors' confirmed Chapter 13 Plan.

**WHEREFORE, PREMISES CONSIDERED**, the Trustee prays that the Court **DISALLOW** claim 19-1, and for such other and further relief to which she may show herself justly entitled.

Respectfully Submitted,

By: /s/ Jason Miller

Jason Miller  
Bar No. 24043824  
Staff Attorney  
ALICE WHITTEN  
STANDING CHAPTER 13 TRUSTEE  
Bar No. 00793029  
6100 Western Place Dr., Ste. 1050  
Fort Worth, TX 76107  
(817) 916-4710 Phone  
(817) 916-4770 Fax

**CERTIFICATE OF SERVICE**

I hereby certify that on October 19, 2010 a true and correct copy of the above and foregoing instrument was served on the date that the instrument was filed electronically. Service was accomplished electronically and/or by first class mail to the parties listed below:

/s/ Jason Miller  
Jason Miller

**ATTORNEYS FOR DEBTOR**

Swindell & Associates, P.C.  
6850 Manhattan Blvd., Suite 250  
Ft. Worth, Texas 76120

**DEBTORS**

Joe Michael Simmons  
Rachael Ann Simmons  
1732 Trego Dr.  
Justin, Texas 76247

**CREDITOR**

GEMB  
P.O. Box 981439  
El Paso, Texas 79998